

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

The March 26, 2003 Office Action required an election under 35 U.S.C. § 121 from:

Group I Claims 1-4 and 7-17, drawn to a centrifuge and various subcombinations thereof, classified in class 494, subclass 43; and

Group II Claims 5 and 6, drawn to methods of particle separation requiring two rotors, classified in class 494, subclass 37.

In response to the Restriction Requirement, Applicants provisionally elect Group I, claims 1-4 and 7-17, for further prosecution in this application.

This election is made *with traverse* and is made without prejudice to Applicants' right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application "[i]f the search and examination of an

entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions." *Id.*

Applicants urge that the Restriction Requirement does not meet the second of these criteria as the search for Groups I and II overlaps. For example, the claims of both Groups I and II share the same class. Further, the method of Group II utilizes the apparatus of Group I. The present claims represent a web of knowledge and continuity of effort that merits examination in a single application. Thus, reconsideration and modification the Restriction Requirement are warranted.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining so many patents is unreasonable in view of the fact that the three groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction requirement are requested, and an early action on the merits is earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP

By:


Samuel H. Megerditchian
Reg. No. 45,678
(212) 588-0800